

GOVERNMENT OF PUDUCHERRY

LABOUR DEPARTMENT

(G.O. Rt. No. 161/AIL/Lab./J/2009, dated 30th December 2009)

NOTIFICATION

Whereas, the Award in ID.No. 10/2000, dated 11-11-2009 of the Labour Court, Karaikal in respect of the industrial dispute between the management of M/s. Karaikal Public Servants Consumers Co-operative Stores Limited, Karaikal and Thiru S. Selvam, Karaikal-over his non-employment has been received;

Now, therefore, in exercise of the powers conferred by sub-section (1) of section 17 of the Industrial Disputes Act, 1947 (Central Act XIV of 1947) read with the notification issued in Labour Department's G.O. Ms.No.20/91/Lab./L, dated 23-5-1991, it is hereby directed by Secretary to Government (Labour) that the said Award shall be published in the official gazette, Puducherry.

(By order)

G. MALAR KANNAN,

Joint Secretary to Government (Labour).

BEFORE THE LABOUR COURT AT KARAİKAL

Present : Thiru P. VELMURUGAN, B.L.,
Presiding Officer,
Additional District Judge.

Wednesday, the 11th day of November 2009

I.D. No. 10 of 2000

Selvam . . . Petitioner

Versus

The President,
Vanavil, The Karaikal Public
Servants' Consumers Co-operative
Stores Limited, P. 207, Karaikal . . . Respondent

This petition coming on this day for final hearing before me in the presence of Thiruvalargal R.Sathiyamoorthy and S. Karthikeyan, Counsels for the petitioner and Thiru R. Thambiraj, Counsel for the respondent, upon hearing both sides and perusing the case records and having stood over till this day for consideration, this court passed the following:

AWARD

This industrial dispute arises out of the reference made by the Government of Pondicherry in G. O. Rt. No.132/2000/Lab./AIL/L, dated 27-9-2000 of the Labour Department, Pondicherry. The Government has made the following references, for adjudication by this court :

(1) Whether the non-employment of Thiru S. Selvam by the management of Karaikal Public Servants Consumers Co-operative Stores Limited, Karaikal is justified or not?

(2) To what relief/benefits, the said workman is entitled ?

(3) To compute the relief, if any, awarded in terms of money, if it can be so computed ?

2. The brief facts set out in the claim petition filed by the petitioner are as follows :

The petitioner was appointed as Junior Assistant in Vanavil, Karaikal Public Servants Consumers Co-operative Stores Limited, P. 207, Karaikal by the respondent and at the time of termination, he received the pay of Rs. 2,800. While the petitioner was working in that Stores, he was suspended by the respondent from the services on 2-12-1995 *vide* Memo. No. KPS/Disc.Action/95-96/4319 and he was issued with two charge-sheets in Memo. Nos. KPS/Disc.Action/I/95-96/4366, dated 23-1-1996 and No. KPS/Disc.Action/I/95-96/4367, dated 23-1-1996 and the Memo., dated 23-1-1996 contained three articles that (1) the petitioner while working as Junior Assistant, Vanavil during March and April, 1995, has prepared bogus receipts and acted in an unbecoming manner, (2) that the petitioner prepared bogus receipts and made entries in Day Book maintained and thereby paved way for the salesman to gain pecuniary advantages, and (3) that the petitioner the above mistakes and caused loss, to the property and money to the establishment. The respondent cited 11 documents and 9 witnesses in order to prove their charges. Again the respondent issued another charge-sheet in Memo. No. KPS/Disc.Action/I/95-96, dated 23-1-1996 containing the charges that (1) the petitioner has inflated the credit sales amount and also entered the same in the sales register and thereby facilitated the salesman to get pecuniary advantages on 3-11-1993, 4-11-1993 and 5-11-1993, (2) that on the same dates, the petitioner has

inflated the credit sales figures and entered in the same in the sales register and thereby prepared bogus documents, and (3) that the above acts of the petitioner resulted in financial loss and loss to the property of the Co-operative Stores. In support of the said charges, the respondent cited one witness and three documents. Thereupon, one Thiru V.A. Adward Kumar, Advocate, Pondicherry was appointed as Enquiry Authority by the respondent, and violating the principles of natural justice, the Enquiry Officer submitted his report to the respondent concluding that the charges levelled against the petitioner are proved and the respondent without application of mind terminated the services of the petitioner in Memo. No. KPS/Disc.Action/III/95-96/5151, dated 16-7-1999. Aggrieved by that order, the petitioner filed this petition contending that according to the bye-law 13-B of the Society the disciplinary action can be taken only by the disciplinary action sub committee and the President of the Society has no power to issue the charge-sheet and as such the appointment of the IO by the President to conduct enquiry is illegal and without jurisdiction and that the whole enquiry is vitiated; that the two charge-sheets are totally different and the supporting documents and witnesses are also different and in view of the denial by the petitioner, two separate enquiry should have been ordered and conducted and thus two enquiry officers should have been appointed and therefore this is irregular and renders the orders of appointment of the IO as void and the proceedings conducted by the inquiry officer is vitiated and liable to be set aside; that the respondent expressed the memo. issued by them a positive and firm view about the petitioner's complicity in the alleged misconduct and the respondent has already drawn conclusion against the petitioner and even after that the petitioner was suspended only to afford the petitioner as opportunity to dispel the conclusion already drawn against the petitioner and that the two charge-sheets issued with a biased and closed mind and as such the disciplinary proceedings must be held to be bad, being vitiated by bias and closed mind; that the respondent, has not sent the copies of the documents along with the charge-sheet and thus the proper procedure for conducting enquiry was not followed and therefore the principle of natural justice is violated; and that during the enquiry the

respondent has not furnished the documents sought for by the petitioner and thereby the opportunity of all relevant evidence on the side of the petitioner was denied; that the petitioner was denied opportunity of examining one M. Kalaimani during enquiry; that the Inquiry Officer has stated in his report that Ex. A1 to Ex. A6 have been introduced through the witness Kahindan but no such document has been filed through that witness; and that the enquiry proceedings is vitiated.

3. The brief facts set out in the counter claim statement filed by the respondent are as follows :

The petitioner while working as Junior Clerk in their concern had made credit bills in the name of different individuals who have not actually made such credit purchasers in the respondent concern. The petitioner himself has admitted in writing by his own handwriting on 31-10-1995 to the effect that in the half year ending 31-3-1995, he has made misappropriation of the textile goods to his advantages to the tune of Rs.15,197.50 and corrected the accounts in the name of P. Kumaran, Bill No.4569, S. Thetheravusamy, Bill No. 4570, S. Viswanathan-4571, J. Kalathiyagarajan-4571, R. Packirisamy-4573, and G. Murugan-4574 all on 29-3-1995 and M. Deivasagayam-4579, S. Veeran-4580, dated 30-9-1995. All these eight bogus sales are made only in the paper but actually the value thereof has been misappropriated by the petitioner himself. Therefore the respondent is put to heavy loss and it was found out during stock taking process by the respondent in the said half year. The enquiry officer has conducted an elaborate enquiry in respect of the alleged charges of the petitioner and all the alleged credit purchasers have categorically denied the purchase on 29-3-1995 and on 30-3-1995 and these credit bills have been duly filled up by the petitioner on his own hand writing and those bills and his letter, dated 31-10-1995 will vouch for the fact that the petitioner was not honest and committed wilful wrong and made wrongful gains from the respondent concern. The petitioner has also given another letter of admission, dated 6-9-1995 that he has manipulated the accounts of the respondent institution and misappropriated to his advantages a huge sum of Rs. 25,000. Since this misconduct is found out only at a later point of time, the officials have taken

appropriate disciplinary action against the petitioner. As per the bye-laws, rules and regulations of the respondent institution, the disciplinary committee is empowered to take appropriate legal action against the wrong doers and they have strictly followed the same and only on the recommendation of the disciplinary committee the petitioner has been terminated from the services on 16-7-1999 and all the salary dues have been paid to the petitioner. Therefore the contention of the petitioner that the President has no powers to appoint the IO is patently wrong. In the enquiry before the IO the petitioner volunteered in admitting the wrong committed by him and identified the manipulations made in the credit bills and the accounts of the respondent institution. In fact, while the enquiry was in progress, the petitioner filed Writ Petition before the High Court challenging the enquiry proceedings by the respondent but at the admission stage itself the writ has been dismissed and he has been directed to co-operate with the enquiry officer. Time and again, the petitioner has applied for copies of documents and whatever the petitioner asked for were all furnished to him. Hence the allegations made by the petitioner is not at all true and therefore prayed for dismissal of the petition with costs.

4. *The points for consideration are :*

Whether the termination of Thiru S. Selvam by the management of Karaikal Public Servants' Consumers Co-operative Stores Limited, Karaikal is illegal?

5. *On point :*

According to the petitioner, while he was working in the respondent institution he was terminated, by the respondent for the alleged charges of misappropriation of the respondent institution money and made huge loss to the respondent institution. Further the respondent has appointed the enquiry officer, to enquire to the imputations of charges levelled against the petitioner and that the President of the respondent institution has no power to appoint the enquiry officer against him and as such the consequent enquiry conducted by the IO is vitiated. Even during the enquiry, the petitioner was not provided with the documents required by him and that he was not given fair chance to go through the documents required by him and that the enquiry

conducted against him is biased and arbitrary and; against the principles of natural justice. Further the petitioner was not given fair opportunity to cross-examine the witnesses during the enquiry by the IO. Therefore he preferred this petition. *Per contra*, the respondent has contended that the disciplinary sub-committee of the institution is having the power to appoint the Enquiry Officer to inquire into the charges levelled against the petitioner and the enquiry was conducted in accordance with the bye-laws of the institution. Further the petitioner was given fair opportunity in cross-examining all the witnesses before the IO and even he was provided with necessary documents as and when required by the petitioner, in writing and therefore, the petitioner cannot say at this stage that the respondent has not provided with the documents required by him and that he was denied of the opportunity to peruse the documents. Further the respondent has contended that even during the pendency of the enquiry the petitioner filed a writ before the Hon'ble High Court challenging the enquiry and that was dismissed by the High Court on the admission stage itself and directed the petitioner to co-operate with the respondent in the enquiry. Therefore the enquiry is fairly conducted by the respondent in accordance with the rules and regulations and the bye-laws of the respondent institution, and as the charges levelled against the petitioner were proved, he was terminated from the services and after termination the petitioner has been paid fully towards the settlement.

6. On perusal of the records, the petitioner while he was working as Junior Assistant in the respondent institution on 3-11-1993, 4-11-1993 and on 5-11-1993 he has inflated the credit sales of textiles in the textiles credit chitta more than the actuals and the inflated figures have been carried over to the salesman liability register for those days and the petitioner has been indicted with three articles of charge that he has prepared false receipts as if about 8 members have been issued with articles on credit on 29-3-2005 and on 30-3-2005 and they were not carried over to the personal ledgers of the members and no demands were sent to the respective departments and these false receipts have been, entered in the daily chitta paving way for their entry into salesmen liability register. Based on the misappropriation found out by the respondent, the

petitioner was issued with charge-sheets along with the imputation of charges and the petitioner was called for explanation. Since no satisfactory explanation was forth coming from the petitioner, one Thiru Adward Kumar, Advocate was appointed as the Inquiry Officer to enquire into the charges levelled against the petitioner. The Inquiry Officer had conducted a foolproof enquiry by giving fair opportunities to the petitioner by following the principles of natural justice and the rules and regulations and bye-laws and concluded that the charges framed against the petitioner as proved. On the strength of the enquiry findings, the respondent has terminated the services of the petitioner and settled all the dues due to the petitioner. Aggrieved by that order the petitioner made a reference to the Government and because of failure of the dispute, the present reference has been made by the Government of Pondicherry for adjudication. On perusal of the evidence of the petitioner who has been examined as PW1 he has deposed in the chief examination that the statements of the witnesses have not been recorded in his presence and the copies of the statements were not furnished to him; that the respondent should have conducted two separate enquiries for the two acts of wrong committed by him but the respondent has failed to do so; that he was not furnished with the copies of the documents sought for; that the inquiry officer did not consider his objection during the enquiry. But during the cross-examination, PW1 has clearly admitted that he obtained the xerox copy of the special bye-law relating to service conditions of employees of the respondent society and Ex.B 1 is the written acknowledgment for having received that copy of documents listed in Ex.B2. Further he has deposed in his cross-examination that he do not remember whether one Kabirdass was examined as PW1 and Ex.A1 to.Ex.A3 were marked and he do not remember whether he examined one Karupaiyan, Salesman Grade-I in the respondent society as his defence witness (DW1) on 20-3-1998. Further PW1 has admitted that he has given two written letters, dated 6-9-1995 and 31-10-1995 to the President of the respondent society *i.e.*, Ex.B3 and Ex.B4. Even he has admitted in his cross-examination that the enquiry officer has given a copy of his report after enquiry. Further he has deposed that he do not know whether the disciplinary committee has powers under the society to terminate the employees even without

notice for the misconduct of the employee from the society. He has further deposed that even during the pendency of the enquiry, the writ petition filed by him was still pending before the High Court. On perusal of the cross-examination of PW1, it is found that the petitioner was provided with .the documents sought by him by the respondent as and when the respondent required. At one point of time, the petitioner deposed in his chief examination that he was not provided with the documents sought by him by the respondent whereas during the cross-examination he admitted that he was provided with the document sought by him. He also admitted that Ex.B1 and Ex.B2 are the acknowledgments in writing for the documents received by him. Further when the petitioner was not sure as to whether PW1 was examined and marked Ex.A1 to Ex.A3 documents and even when he was not sure that whether DW2 was examined or not on his side, the petitioner cannot say at this stage that the respondent has not conducted a fair enquiry. It clearly shows that the petitioner only in order to thwart the respondent's contention has simply denied the questions of the respondent without any proof. Both in the chief examination and in the cross-examination, the petitioner has admitted that he has given letters admitting all his acts of unbecoming of a servant of the society and on perusal of the letters, dated 30-10-1995 and 6-9-1995 which are marked as Ex. B3 and Ex. B4, the petitioner has admitted all his acts of misconduct and also requested the President not to initiate any disciplinary action against him as he is responsible for such act of misappropriation and manipulations. When the petitioner himself executed those letters on his own hand writing to the respondent, he cannot say before this court that they were written only by force by the society. Even if it is true, the petitioner has not mentioned the names as to who are all forced him to write those letters but he has not mentioned such names either in his chief examination or in the cross-examination and therefore it can be construed only as a bald denial. The learned counsel for the petitioner also relied on the decision in this regard, reported, in (2009) 2 Supreme Court Cases 570-Roop Singh Negi V. Punjab National Bank, wherein it is held that—

“D. Service Law - Departmental enquiry-Admission/ Confession-Proof of-Appellant alleged to have confessed to police that, he was involved in stealing of bank draft book—Held, so called confession itself was

not sufficient-Some evidence ought to have been brought on record that appellant was involved in stealing-Evidence Act, 1872-S.25”.

In the present case on hand, on careful scrutiny of the evidence it shows that the admission was not made before the police officer or disciplinary authority. The petitioner himself admitted his acts of misconduct and defalcation and submitted letters to that effect on two occasions *vide* Ex. B3 and Ex. B4 letters. The petitioner's contention that Ex. B3 and Ex. B4 are obtained by force by the society, is not substantiated through any oral evidence since he has not specified the names of the persons who forced or coerced him to give those letters. He has also not let in any evidence as to who are all threatened him and forced him to write those letters. Therefore the contention raised by the petitioner is not sustainable. In the decision relied on by the petitioner, the admission or confession made before the police enquires some evidence. But in this case, the admission was not made before, the either police officer or the disciplinary authority. Hence the facts and circumstances of this case is entirely different and therefore the reliance placed by the petitioner is squarely not applicable.

7. PW1 has also deposed that during the pendency of the disciplinary proceedings he filed the Writ before the Hon'ble High Court challenging the enquiry conducted by the respondent and the same is pending disposal before the High Court and he denied in the cross-examination that the said Writ is not pending and it is still pending. But he has not proved before this court that it is still pending before the Hon'ble High Court by producing the relevant petition or other documents On 27-5-1996, the enquiry was commenced and it was concluded by the inquiry officer on 23-3-1999 and even in the enquiry findings, the enquiry officer has concluded that the petitioner has admitted that he has prepared, the bills but only tried to justify it to saying that the bills were prepared to adjust the textile issued to the staff and the suspense account. Further perusal of the enquiry report also reveals, one Mr. Karuppaian, Salesman Grade-I, examined on the side of the petitioner as DW2 stated that the practice of receiving textiles under suspense was not prevalent in the society and therefore it is clear that as the evidence of DW2 is not supporting the contention of the petitioner, the petitioner has deposed in his cross-examination that he do not remember as to whether Karuppaian was examined on his side as a witness on his side or not. Ex.B3 and Ex. B4 documents in the enquiry are the self-serving documents to conclude that the petitioner has committed defalcation and manipulations and that the petitioner's

contention that it was obtained only by force by the society, is not acceptable, as no specific evidence is let in by the petitioner to prove the same. No proper explanation is offered by the petitioner to substantiate his contention. Hence it is found that Ex. B3 and Ex. B4 were executed by the petitioner voluntarily admitting his act of defalcation and manipulation. Accordingly, the enquiry officer also concluded that the charges levelled against the petitioner as proved and consequently, the petitioner was terminated by the respondent and that all the documents and the evidence of RW1 would clearly prove that the enquiry was conducted by the respondent fairly by giving sufficient and fair opportunities to the petitioner by strictly following the principles of natural justice. As already stated that the petitioner has not proved that Ex.B3 and Ex.B4 were obtained by force from him this court can come to a conclusion, that Ex.B3 and Ex.B4 were written and submitted by the petitioner voluntarily and as such the petition filed by the petitioner is liable to be dismissed. Therefore, this court finds that the termination of the petitioner by the respondent, is justified.

8. In the result, the petition is dismissed. Considering the facts and circumstances of the case, there is no orders as to costs.

Dictated to Stenographer, transcribed by him, corrected and pronounced by me in the open Court, this the 11th day of November 2009.

P. VELMURUGAN,
Presiding Officer, Labour Court,
Karaikal.

Petitioner's witnesses:

PW1 — Selvam

Petitioner's exhibits : Nil

Respondent's witnesses:

RW1 — S. Rajendiran

Respondent's exhibits :

Ex.R1 6-8-1996 Acknowledgment

Ex.R2 4-10-1996 Acknowledgment

Ex.R3 6-9-1995 Letter given by the petitioner

Ex.R4 31-10-1995 Letter given by the petitioner.

P. VELMURUGAN,
Presiding Officer, Labour Court,
Karaikal.